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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session (17 to 21 November 2014)

No. 53/2014 (Oman)

Communication addressed to the Government on 20 December 2013

Concerning Talib Ahmad Al Mamari

The Government replied to the communication on 7 January 2014. Furthermore, on 25 November 2013, it provided details on the case of Mr Al-Mamari in its reply to a related communication.

The State is not a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

4. Talib Ahmad al-Mamari, born on 24 May 1972, is a citizen of Oman. He worked as an Arabic language teacher before becoming president of the Arabic language section of Sohar University for 12 years.

5. Following the parliamentary reform in Oman that took place in 2011, wherein the powers of the Shura Council were expanded and the first elections of its members were organized, Mr Al-Mamari was elected to and has since served as a member of the Shura Council.

6. It is reported that Mr Al-Mamari has been a vocal advocate in the Shura Council against environmental damage and pollution in his native region of Liwa, Oman. He has also criticized the Government's commitment to the rule of law and its system of governance.

7. In late 2012, the source informs that Mr Al-Mamari was allegedly beaten, threatened and handcuffed by police officers in the room of a hotel where he was staying. The source reports that the threats were in connection to his role in the Shura Council and his vocal criticisms of the Government.

8. It is further reported that, in 2012, the Public Prosecution commenced proceedings against Mr Al-Mamari for having posted on the social media website Facebook a criticism of an employee of the Ministry of Housing. The Prosecution requested the Shura Council to lift Mr Al-Mamari's parliamentary immunity in order that it may charge him with having committed an act of defamation. The Shura Council rejected that request.

9. On 22 August 2013, a reportedly peaceful demonstration of local residents from Liwa took place at the entrance to the port of Sohar in protest against the pollution caused by the petrochemical industries in the area. Witnesses report that Mr Al-Mamari attended the demonstration as a mediator in his capacity as a member of Parliament. It is alleged that numerous security force agents fired tear gas and used a water cannon to disperse the crowd, resulting in injuries to many individuals, including to Mr Al-Mamari.

10. On 23 August 2013, Mr Al-Mamari is reported to have met with Shura Council members and security authorities to discuss the protests and the response of the security forces. After the meeting, Mr Al-Mamari returned to his brother's house in the early hours of 24 August 2013, where he was staying at the time. Upon his arrival, it is alleged that the

house was surrounded by dozens of police cars. A large number of police officers then entered the house and arrested Mr Al-Mamari, who was charged with the offence of "gathering in public".

11. Mr Al-Mamari was released on bail at 1.00 a.m. on Friday, 11 October 2013. In the early evening of that day, he was summoned by the police and detained once more. Since that time, it is reported that Mr Al-Mamari has been held in solitary confinement in the detention centre of the National Security Prison in Muscat. His lawyer was not granted access to his client during the whole period preceding his appeal.

12. The first hearing before the Court of Appeal was held on 30 October 2013. After several postponements, the Court issued its verdict on 16 December 2013. It sentenced Mr Al-Mamari to four years in prison, comprising three years in prison and a 500 Riyals fine for "an attempt against the State prestige" and one year in prison for "disturbing public order" and "obstructing traffic". The source informs that the judgement of the Court of Appeal is not subject to appeal.

13. The source submits that Mr Al-Mamari's detention may be considered arbitrary according to categories I and II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

14. The source argues that Mr Al-Mamari's detention is without legal basis as his status as an elected member of Parliament provides him with immunity from prosecution. According to article 3 of the internal regulation of the Shura Council, "no penal action for a non-attested crime shall be taken against any member during sessions without the Majlis' permission. Such permission shall be obtained from the President in between sessions". The source conveys that Mr Al-Mamari's immunity was not lifted by either a majority vote in the Shura Council or an action of its President.

15. The source maintains that Mr Al-Mamari's detention results from the exercise of the rights to freedom of expression and of peaceful assembly guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 24 and 32 of the Arab Charter on Human Rights, as well as Omani Basic Law. Mr Al-Mamari publicly expressed his opinions before Parliament and took part in public demonstrations in 2011 and in 2013 in the framework of popular protests against the pollution emanated by petrochemical industries in the region. The source argues that Mr Al-Mamari's detention is a direct result of having participated in those activities.

Response from the Government

16. On 20 December 2013, the Working Group communicated the allegations of the source to the Government of Oman, requesting it to provide detailed information about the current situation of Mr Al-Mamari and to clarify the legal provisions justifying his continued detention and their compliance with international law.

17. The Government of Oman replied to the communication on 7 January 2014. Furthermore, on 25 November 2013, it provided information on Mr Al-Mamari's case in its reply to a related communication.

18. In its response of 25 November 2013, the Government provided the information below.

19. The Government states that the security authorities observed acts of incitement on the part of the principal accused, Talib bin Muhammad al-Mamari, including threats and promises and the provocation of ill feeling among the population of the province of Liwa in a manner detrimental to the standing and prestige of the State.

20. According to the Government, Mr Al-Mamari had influence over a large section of the province's population by virtue of his position as a member of the Shura Council and, four days before the gathering, had publicly threatened to use social media against the competent authorities, saying that, if they failed to meet the public's demands, the entire population of Liwa would march to the industrial port of Sohar on Thursday, 22 August 2013. This threat was actually put into effect when more than 600 persons gathered at Al-Hadd roundabout, about one kilometre from the port gateway and about 600 metres from the port causeway.

21. That gathering was not a peaceful sit-in as a few people have maintained; on the contrary, it led to a disruption of public order in many respects insofar as the march continued towards the port gateway, thereby blocking the roads and paralyzing traffic to and from the port. Moreover, some of the marchers were carrying Molotov cocktails and had their faces covered. Although the security authorities attempted to stand their ground and halt the marchers, the latter, led by the accused, Talib al-Mamari, refused to comply and insisted on continuing. The competent authorities were therefore compelled to fire tear gas and, when this failed to halt the marchers, used water cannon to disperse them.

22. There was no intention to arrest the marchers when they dispersed from the scene of the incident. However, when some of the marchers (the accused persons) persisted in returning to reform their ranks, the security authorities had no choice but to arrest them *in flagrante delicto*, particularly after police officers were attacked and tyres were burned on the public highways.

23. The security and judicial authorities dealt with these incidents in accordance with the proper legal procedures from the time of arrest of the accused to their appearance in court. Their defence counsels were present throughout the investigation and trial proceedings and did not place on record any noteworthy observations questioning the validity of the arrests or claiming that arbitrary methods or coercion had been used against their clients.

24. The Government states that the offences with which the accused were charged constitute criminal acts prejudicial to the internal security of the State and these proven acts of riotous assembly in breach of public order and obstruction of traffic on public highways are punishable under the provisions of articles 137 and 137 bis of the Omani Penal Code. The proven criminal act of incitement by the accused, Talib bin Muhammad al-Mamari, with a view to discrediting the standing and prestige of the State is also punishable under the provisions of article 135 of the same Code. A copy of the indictment, specifying the charges brought against the accused persons, together with the list of probative evidence against them, were enclosed with the response of the Government.

25. The Court of First Instance in Muscat handed down its judgement, in which all the accused were convicted on the charges brought against them. The convicted persons lodged an appeal against that judgement and were all released pending its hearing by the Criminal Division of the Court of Appeal in Muscat.

26. According to the Government, with regard to the pollution caused by the industries in the port, it was found that, in 2011, the local residents had filed a complaint with the Department of Public Prosecutions against the companies concerned and, when the Department decided to close the case on the grounds of insufficient evidence, the residents had lodged an appeal against that decision with the Court of Appeal in Sohar, which upheld the decision to close the case on the grounds that the decision had been consistent with the true facts and the law. The Government authorities nevertheless began to seek satisfactory solutions by moving the local residents to locations far from the port area and are currently completing the final procedures to that end. Hence, the riotous assembly instigated by the principal defendant, Talib al-Mamari, was not motivated primarily by the pollution but was

largely attributable to his personal ambitions, particularly as he was legally empowered to raise that issue with the officials concerned through face-to-face meetings, official channels or the Shura Council (Parliament) of which he was a member.

27. In its further response of 7 January 2014, the Government of Oman referred to some general principles of domestic law. It provided the information below.

28. According to the Government, no one can be arrested unless he or she commits a crime punishable according to Omani Law. It further states that punishments fixed by law for an offence may be enforced only on the basis of a judgement of a competent court; that the basic law of the State guarantees a fair trial to every person; that the accused is innocent until proven guilty; that some accused have been sentenced by definitive judgements after having exhausted all means of appeal provided by law (i.e., through the Primary Court, Appeal Court and Supreme Courts), thus proving the integrity of the judicial system; and that the acts committed by the accused are criminalized by law. There shall by no means be any interference in lawsuits or affairs of justice, except as provided by law. Article 61 of the basic law of the State provides that there shall be no power over judges in their ruling except for the law. This is also underlined by article 279 of the Penal Procedure Law, which states that, if a judgement is issued on the merits of a civil action, it may be reviewed only by appeal to such a judgement through means provided in this Law.

Further comments from the source

29. In accordance with paragraph 15 of the revised methods of work of the Working Group, the replies of the Government were brought to the attention of the source. The source provided the below comments on 11 March 2014.

30. The source notes that the Government of Oman does not contest that the arrest of Mr Al-Mamari was carried out following a demonstration expressing legitimate requests. Furthermore, in its response, the Government considers Mr Al-Mamari to be a leader of the demonstration, when in fact the source contends he played the role of mediator between the Liwa population and the authorities.

31. The Government affirms that the demonstration was not peaceful and admits using force against protesters, including using tear gas, to disperse them. The source observes that the Government contradicts itself, arguing that the purpose of the security forces was not the arrest of protesters, yet later states that they received orders to arrest protesters "caught in the act".

32. The source further notes that Mr Al-Mamari was not arrested during the demonstration but in a night raid on his family's home more than 24 hours following the dispersion of the demonstration. Despite this, the Government invoked the argument of *in flagrante delicto*.

33. Moreover, according to the source, Mr Al-Mamari, as a parliamentarian, should not have been arrested before his immunity was waived. The source recalls that the chair of Parliament can decide to waive parliamentary immunity, but that this has not been done to date. It is also possible to waive immunity automatically if a parliamentarian is present at the scene of a crime. However, as Mr Al-Mamari was arrested at home one day after the demonstration, the argument of *in flagrante delicto* cannot therefore be invoked. It concludes that Mr Al-Mamari still enjoys parliamentary immunity.

34. The source emphasizes that the Government also admits in its response that Mr Al-Mamari was arrested for "an attempt against the State prestige", according to the provisions of article 135 of the Omani Criminal Code. In its view, this offence is formulated in an excessively broad manner in order that authorities may use it to repress any dissenting opinion or political action, even if peaceful. The source contends that the demonstration

was not of a political nature, but rather concerned a major public health issue, that is, pollution in Liwa. The inhabitants of Liwa, the source informs, did not request political reforms but only claimed their right to live in a healthy environment. In doing so, they never insulted the authorities or even demanded political change, but only requested that the authorities find a solution to reduce the pollution in the region.

35. The source notes the Government's tacit acknowledgment of the legitimacy of the protestors' requests, as it explicitly declares that measures are being taken to ensure the transfer of the Liwa population to another region removed from the pollution, upon the request of the region's population. The Government specifically recalls that an action was taken by the residents of Liwa in 2011, and that measures promised have not yet been implemented.

36. In the source's view, the Government's failure to provide replies to several of the allegations put to it can be interpreted as tacit acceptance of the veracity of such allegations. The source notes specifically that, in its reply, the Government omitted to provide any comment on the controversial application of article 135 of the Omani Criminal Code and its compatibility with international human rights law. According to the source, this article is in breach of the freedoms of expression and peaceful assembly guaranteed in the Universal Declaration of Human Rights. The potentially excessively broad interpretation of the article has resulted in the systematic violation of the rights to freedom of expression and peaceful assembly.

37. The source notes that, in its reply, the Government also omitted to address the question of Mr Al-Mamari's parliamentary immunity. It advances that Mr Al-Mamari, as a parliamentarian, should not have been arrested either the first or the second time, as he was privileged by his immunity. Furthermore, the conditions for lifting his immunity were not met.

38. The source further notes that, in its reply dated 7 January 2014, the Government does not provide any further relevant information to the case under consideration, but rather lists Omani legal provisions and constitutional guarantees relating to fair trial norms. In the source's view, the acts that Mr Al-Mamari is accused of committing are indeed criminalized by law, yet the relevant criminal provisions have been interpreted in such an excessively broad manner that they have resulted in violations of the rights to freedom of expression and of peaceful assembly.

Discussion

39. Mr Al-Mamari has been a vocal advocate in the Shura Council against environmental damage and pollution in his native region of Liwa. He has also criticized the Government's commitment to the rule of law and its system of governance.

40. In its response, the Government states that Mr Al-Mamari was arrested for committing "an attempt against the State prestige", pursuant to the provisions of article 135 of the Omani Criminal Code. This law provides for punishment of "anyone who participates in a private gathering including at least 10 individuals with a view to committing a riot or a breach of public order (...) if the assembly does not disperse following an order issued by an authority officer". The law allows a broad interpretation that may result, as in the case under consideration, in a violation of the right to freedom of peaceful assembly and of association. It is on the basis of that law that, following the protest, many protesters were arrested for having exercised their rights to freedom of expression and of peaceful assembly. The Government does not deny that the Liwa population claimed only their right to live in a healthy environment.

41. Although the Government maintains that the demonstration was not peaceful, there is no information in its response that would support this statement. Indeed, the Government

does not refer to any evidence that Mr Al-Mamari, who attended the demonstration as a member of Parliament, was involved in any violence at the demonstration.

42. The Government does not deny the allegation that Mr Al-Mamari was arrested despite his parliamentary immunity, which has not been waived. Furthermore, Mr Al-Mamari was arrested at home a day after the demonstration. Thus, the argument of *in flagrante delicto*, which could automatically overturn the immunity, was not applicable in his case. Nevertheless, the authorities applied that argument in order to circumvent the immunity and to punish Mr Al-Mamari for supporting the Liwa population in exercising their right to live in a healthy environment.

43. In this case, Mr Al-Mamari was charged with, "gathering in public" and was sentenced to three years of imprisonment for "an attempt against the State prestige" and one year imprisonment for "disturbing public order" and "obstructing traffic". The Working Group concludes that Mr Al-Mamari has been deprived of his liberty for having peacefully exercised his rights to freedom of expression and of peaceful assembly, as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights.

44. Thus, the deprivation of liberty of Mr Al-Mamari falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

45. The Government does not rebut the allegation Mr Al-Mamari's lawyer was not granted access to his client during the whole period preceding his appeal. The Working Group considers that this non-observance of the international norms relating to the right to a fair trial, namely, article 10 of the Universal Declaration of Human Rights, is of such gravity as to render the deprivation of liberty arbitrary. Thus, the deprivation of liberty of Mr Al-Mamari additionally falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it

Disposition

46. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

> The deprivation of liberty of Mr Al-Mamari is arbitrary, being in contravention of articles 10, 19 and 20 of the Universal Declaration of Human Rights. It falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

47. Consequent upon the opinion rendered, the Working Group requests the Government of Oman to take the necessary steps to remedy the situation of Mr Al-Mamari and to bring it into conformity with the standards and principles set out in the Universal Declaration of Human Rights.

48. Taking into account all the circumstances of the case, the Working Group concludes that the adequate remedy would be to immediately release Mr Al-Mamari and to accord him an enforceable right to compensation.

[Adopted on 21 November 2014]